

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

Present: Hon'ble Mr. Rajendra Singh

----- Acting Chairman

Hon'ble Mr. Arun Singh Rawat

-----Vice Chairman (A)

CLAIM PETITION NO.10/SB/2026

Sri Arun Kumar Bisht, aged about 56 years, s/o Late Sri Pati Singh Bisht, r/o H.No. 3, Vivek Vihar, Lane No. 2, Nakraunda Road, Balawala, Dehradun, Uttarakhand.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Watershed Management, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Chief Project Director, Directorate, Uttarakhand, Indra Nagar, Forest Colony, Dehradun.
3. Project Director, Watershed Management, Garhwal Region, Muni ki Reti, District Tehri Garhwal, Uttarakhand.

.....Respondents

Present: Sri L.K.Maithani & Sri R.C.Raturi, Advocates,
for the petitioner.
Sri V.P. Devrani, A.P.O. for the State Respondents.

JUDGMENT

DATED: JULY 24, 2026.

Sri Arun Singh Rawat, Vice Chairman (A)

By means of present claim petition, petitioner seeks the following reliefs:

“i) To quash the impugned pay refixation order dated 13.10.2023 and impugned recovery order/chart of respondent No. 3 with its effect and operation.

ii) To issue an order or direction to the respondents to remit back the recovered amount of Rs. 1,97,226/- to the petitioner with interest.

iii) To issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

iv) To award the cost of the case.”

2. Claim petition is supported by the affidavit of the petitioner. Relevant documents have been filed along with the petition.

3. Facts, giving rise to present claim petition are that, the petitioner is presently working as Senior Administrative Officer in the office of the Project Director, Watershed Management, Garhwal Region, Muni-ki-Reti, Tehri Garhwal. In the year 2013, the petitioner was granted the benefit of ACP with Grade Pay of Rs. 4200/-, and his pay was fixed accordingly. The said benefit was given by the department after due consideration of the applicable Government Orders and service rules, and the petitioner continued to draw salary on that basis without any objection for several years.

3.1 Thereafter, the State Government issued G.O. No. 150543 dated 30.08.2023, directing scrutiny of pay fixation of employees. In compliance of the said Government Order, respondent no. 2 examined the pay fixation of the petitioner and came to the conclusion that the ACP Grade Pay of Rs. 4200/- had been wrongly granted. Consequently, respondent no. 2 passed office order no. 22 dated 13.10.2023, by which the pay of the petitioner was re-fixed at a lower stage and the earlier benefit of Grade Pay Rs. 4200/- was withdrawn. Thereafter, respondent no. 3 also prepared a recovery chart/order, by which an amount of Rs. 1,97,226/- was directed to be recovered from the petitioner. The said office order dated 13.10.2023 and the recovery chart/order are being filed as Annexure No. A-1 and Annexure No. A-2 respectively.

3.2 Being aggrieved by the refixation of pay and the recovery, the petitioner submitted a representation dated 17.04.2025 before the respondents, requesting them to stay the recovery and reconsider the matter.

However, respondent no. 2, by order/letter dated 31.05.2025, refused to stay the recovery on the ground that there was no provision in the Government Order to stop the same. The copy of the petitioner's representation dated 17.04.2025 is enclosed as Annexure No. A-3, and the reply/order dated 30.05.2025 passed by respondent no. 2 is enclosed as Annexure No. A-4 to the claim petition.

3.3 The case of the petitioner is that the ACP benefit had been granted in the year 2013 after proper recommendation and there was no fraud, concealment, or misrepresentation on his part. The alleged excess payment relates to a period of more than 10 years, and during all these years audit inspection of the department was made but no objection was ever raised regarding the petitioner's pay fixation. Therefore, the subsequent re-fixation of pay at a lower stage and recovery of Rs. 1,97,226/- after such a long period are illegal, arbitrary and contrary to law, particularly in view of the principles laid down by the Hon'ble Supreme Court in State of Punjab vs. Rafiq Masih.

4. Petition has been contested on behalf of respondents. Ms. Kahkashan Naseem, Project Director, Watershed Management Garhwal Region, Muni ki Reti, Tehri Garhwal, has filed C.A. on behalf of Respondents.

4.1 It has been submitted in the C.A. filed on behalf of respondents that the petitioner was initially appointed on the Class III post of Junior Clerk in the pay scale of Rs. 950-20-1150/- under the Watershed Management of the erstwhile State of Uttar Pradesh. Upon creation of the Uttarakhand State from Uttar Pradesh under reorganization Act the petitioner was absorbed into the Directorate of Watershed Management, Uttarakhand on the same post of Junior Clerk, at present he is working on the post of Senior Administrative Officer.

4.2 It is the submission of the respondents that mistakenly the Department had given erroneous payment to petitioner from 01.01.2013 till 31.05.2023 by granting the wrong benefit of Grade Pay. When this came into the knowledge of the respondent department, the re-fixation order dated 13.10.2023 was issued by the Respondent no. 3 (Project Director) in which the

excess & over payment of Rs 1,97,226/- which was received by the petitioner w.e.f. 01.01.2013 till 31.05.2023 was adjusted from the petitioner. The said benefit was not his actual legal entitlement as per law, therefore same was liable to be adjusted being a taxpayer's money.

4.3 There has been a conscious decision of adjustment for the over & excess payment made to the employees. A policy decision has been taken by the State Govt. vide its letter dated 30.08.2023 after examining and scrutinizing the erroneous pay fixations of Govt. employees done on account of recommendation/implementation of the pay commissions report and also on account of other benefits granted like ACPs by issuing different Govt. orders, so that the employees get the monetary benefits of their actual entitlement. Hence according to letter dated 30.08.2023, the excess payment made to the petitioner shall be adjusted. Moreover said letter has never been challenged before any Court of law by the petitioner. (Letter dated- 30.08.2023: Annexure No. C-A-R-1).

4.4 It is further submitted in the C.A. that the case of Rafiq Masih vs State of Punjab and others will not be applicable in the present case as the petitioner is a working Employee on the post of Senior Administrative Officer in Watershed Department. As far as correct fixation of pay is concerned, the Hon'ble Apex Court in the case of Madhukar Antu Patil & another vs State of Maharashtra & another (Civil appeal no. 1985 of 2022) held that it is the settled preposition of law that correct pay fixation can be issued when it came into the knowledge of the Department accordingly adjustment of erroneous payment can be done by the Department. Hence the correct pay fixation order dated 13.10.2023 is legally correct/perfect & valid in the eyes of law and the claim petition preferred by the petitioner against the said order has no legal substances and same is liable to be dismissed with cost.

4.5 It is also submitted in the C.A. that provision of the para 81(3) of the Financial Handbook volume 5 of part 1 clearly provides that recovery and adjustment of any excess or overpayment erroneously extended to an

employee is expressly authorized. Hence, the department's action is fully in consonance with statutory financial provisions.

5 Rejoinder Affidavit has been filed on behalf of the petitioner, reiterating the averments mentioned in the petition.

6 We have heard the arguments of the Learned Counsel for the petitioner, Learned APO and perused the documents carefully, placed before the Tribunal.

7. Learned Counsel for the petitioner argued that the petitioner is in service. The respondents recovered a sum of Rs 1,97,226/- from the petitioner on the ground that excess payment was made to him after grant of ACP in the grade pay of Rs.4200/- in the year 2013. The recovery order has been passed in the year 2023. There is a delay of almost 10 years in recovering the amount paid to him. Above amount can not be recovered from his salary in view of the judgement of the Hon'ble Apex Court in the matter of State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334. Since the ACP in the grade pay of Rs 4200/- has been paid to him in the year 2013 that also cannot be downgraded. In view of the above, the impugned order is liable to be quashed and claim petition is liable to be allowed .

8. Learned Counsel for the Respondents has argued that the petitioner was granted ACP in the grade pay of Rs 4200/- in 2013 . Which has been reviewed in view of the GO NO. 150543 dated 30/08/2023 and the pay of the petitioner was refixed. The excess amount which has been paid to the petitioner due to wrong fixation ACP was calculated to be Rs. 1,97,226/- . This excess amount has been ordered to be recovered from the salary of the petitioner. There is no illegality in the order dated 30.08.2023 , the claim petition has no force and same is liable to be dismissed. The judgement of the Hon'ble Apex Court in matter of State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334 is not applicable in this case as the petitioner is continuously drawing the benefit of the higher pay scale given to him for almost 10 years. As far as correct fixation of pay of the petitioner is concerned, the Hon'ble Apex Court in the case of Madhukar Antu Patil & another vs State of Maharashtra &

another (Civil appeal no. 1985 of 2022) held that it is the settled preposition of law that correct pay fixation can be issued when it came into the knowledge of the Department, accordingly adjustment of erroneous payment can be done by the Department. So, there is no bar to correct fixation of the pay. In view of the facts in the claim petition, counter affidavit submitted by the respondents and the judgement of the Hon'ble Apex Court, the Claim petition is liable to be dismissed.

9. Based on the arguments of the Learned Counsels for the parties and perusal of the record, we find that the petitioner was given monetary benefit, which was in excess of his entitlement. The monetary benefits given was consequent upon mistakes made by the Respondent Department in granting ACP. He was in receipt of monetary benefits, beyond the due amount, on account of unintentional mistake committed by the Respondent organization.

10. The petitioner was not guilty of furnishing any incorrect information, which led the Respondent Organization to commit the mistake of making higher payments to him. The payment of higher grade pay to the petitioner was neither on account of any misrepresentation made by him nor was it on account of any fraud committed by him. Any participation of the petitioner in the mistake committed by the employer, in extending the undeserved higher grade pay and monetary benefit subsequently, is totally ruled out. The petitioner was as innocent as his employer, in the wrongful determination higher grade pay.

11. The issue was settled by the Hon'ble Apex Court in **State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334**. Based on the decision rendered by Hon'ble Apex Court in Syed Abdul Qadir vs. State of Bihar, (2009) 3 SCC 475 and hosts of other decisions, which were cited therein including B.J. Akkara vs. Union of India, (2006) 11 SCC 709, the Hon'ble Apex Court concluded thus:

"18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference,

summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- i.Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
- ii.Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- iii.Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- iv.Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
- v.In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."*

[Emphasis supplied]

12. Reference may also be had to the decisions rendered by the Hon'ble Apex Court on 02.05.2022 in Civil Appeal No. 7115 of 2010, Thomas Daniel vs. State of Kerala & others, & in Civil Appeal No. 13407/2014 with Civil Appeal No. 13409 of 2015, B.Radhakrishnan vs. State of Tamil Nadu on 17.11.2015, decision rendered by Hon'ble Uttarakhand High Court on 12.04.2018 in WPSS No. 1346 of 2016, Smt. Sara Vincent vs. State of Uttarakhand and others, and decision rendered by Hon'ble Madras High Court on 019.06.2019 in WP(MD) No. 23541/2015 and M.P. (MD) No. 1 of 2015, M.Janki vs. The District Treasury Officer and another. It was held that the recovery of the excess amount is restrained in equity while the Court exercises judicial discretion to relieve the employee from hardship that will be caused if such a recovery is implemented and this view has been taken more particularly in respect of employees of lower rungs.

13. There is, however, no embargo on the respondents department against correct fixation of pay after retirement, as per the decision rendered by Hon'ble High Court of Judicature at Allahabad on 17.12.2018 in Writ-A No. 26639/2018, Smt. Hasina Begum vs. Purvanchal Vidyut Vitran Nigam Ltd, Prayagraj and 02 others [Citation-2018: AHC:204373].

14. Hon'ble Supreme Court, in the decision in Civil Appeal No.1985 of 2022, the State of Maharashtra and another vs. Madhukar Antu Patil and

another on 21.03.2022, has observed that re-fixation of pay scale can be done for pension but there shall not be any recovery of the amount already paid to the retired employees.

15. In view of the facts and the judgements of the Hon'ble Courts, it is clear that the petitioner is a serving Group 'C' employee and recovery made from him would be iniquitous or harsh to such an extent that it would far outweigh the equitable balance of employers' right to recover. This case is covered under the guidelines laid down by the judgement of Hon'ble Apex Court in State of Punjab vs. Rafiq Masih, (2015). The petitioner is entitled to be refunded the amount of Rs. 1,97,226/- but order related refixing the salary of the petitioner cannot be interfered.

ORDER

The claim petition is hereby partly allowed. The portion of the impugned order dated 13.10.2023 for recovery of Rs 1,97,226/- is hereby quashed but portion of the order dated 13/10/2023 for refixation of the pay is not interfered. No order as to costs.

(RAJENDRA SINGH)
ACTING CHAIRMAN

(ARUN SINGH RAWAT)
VICE CHAIRMAN (A)

DATE: JULY 24, 2026.
DEHRADUN

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